



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Sentrix Pharmacy and Discount, L.L.C.

Respondent Name

New Hampshire Insurance Company

MFDR Tracking Number

M4-16-2626-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

April 29, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The insurance carrier, Gallagher Bassett, failed to take final action on the claim within the 45-day period set forth in TAC §133.240. Specifically the claim was submitted and received by the provider on 1/26/16 ... and no action was taken on the claim. Sentrix resubmitted the bill for reconsideration and it was received by the provider on 3/8/16 ... The carrier failed to take any action."

Amount in Dispute: \$12,607.46

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Based upon our initial review, payment was going to be allowed but our client First Group/Gallagher Bassett determined that the charges were not related or medically necessary as a result of a workplace injury. The issue is the use of a topical analgesic is considered an experimental treatment and according to SOAH DOCKET NO. 454-16-1884.M4-NP, a compound cream must have preauthorization since it has not been accepted as the prevailing standard of care."

Response Submitted by: Rising Medical Solutions, Inc.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 18, 2016	Pharmacy Services - Compound	\$12,607.46	\$12,607.46

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.200 sets out the insurance carrier's procedures for receipt of medical

bills.

4. 28 Texas Administrative Code §133.210 sets out the procedures for medical documentation.
5. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
6. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
7. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
8. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
9. The submitted documentation does not include explanations of benefits presented to the requestor prior to medical fee dispute resolution.

Issues

1. What are the services in dispute?
2. Did New Hampshire Insurance Company reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
3. Is Sentrix Pharmacy and Discount LLC entitled to reimbursement for the disputed services?

Findings

1. Sentrix Pharmacy and Discount LLC (Sentrix) is seeking reimbursement of \$12,607.46 for a compound dispensed on date of service January 18, 2016 with the following ingredients:
 - Propylene, NDC 38779051001, 12.0 milliliters
 - Gabapentin 15%, NDC 38779246108, 36.0 grams
 - Fluticasone Propionate 1%, NDC 38779276004, 2.4 grams
 - Pracasil™ Plus-Base AWP Crm, NDC 51927465500, 170.4 grams
 - Naproxen 5%, NDC 62991290401, 12.0 grams
2. Sentrix contends that Gallagher Bassett, an agent of New Hampshire Insurance Company (NHIC) "failed to take final action within the 45-day period set forth in TAC §133.240." Furthermore, in its reconsideration request, Sentrix also alleges that "Sentrix has not ... received any sort of notification or EOBR."

According to Texas Labor Code Sec. 408.027(b), NHIC was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Sentrix. Corresponding 28 Texas Administrative Code §133.240(a) also required NHIC to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

- (6) Final action on a medical bill—
 - (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
 - (B) denying a charge on the medical bill.

The following evidence supports the written statement from Sentrix that the pharmaceutical bill for the service in dispute was initially received by Gallagher Bassett on January 26, 2016:

- A copy of a USPS certified mail receipt with tracking number 9414 8118 9956 3388 0488 61, postmarked January 20, 2016.
- A USPS tracking document indicating that Gallagher Bassett received USPS tracking number 9414 8118 9956 3388 0488 61 on January 26, 2016 at the location listed on the USPS receipt.

Rising Medical Solutions, Inc. (Rising) argued in its position statement on behalf of Gallagher Bassett that "the charges were not related or medically necessary as a result of a workplace injury" and that "a compound cream must have preauthorization." There is evidence to support that Gallagher Bassett received a pharmaceutical bill for the services in dispute on January 26, 2016. 28 Texas Administrative Code §133.210(e) states:

It is the insurance carrier's obligation to furnish its agents with any documentation necessary for the resolution of a medical bill. The Division considers any medical billing information or documentation possessed by one entity to be simultaneously possessed by the other.

Possession of the pharmacy bill by Gallagher Bassett is therefore considered to be simultaneously possessed by NHIC. NHIC was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Sentrix, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the divisions Laws and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that NHIC took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that NHIC timely presented **any** defenses to Memorial on an explanation of benefits as required under 28 Texas Administrative Code §133.240 prior to the request for medical fee dispute resolution.

NHIC's failure to timely issue an explanation of benefits to Sentrix creates a waiver of defenses that Rising raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that NHIC raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in NHIC's position statement, as submitted by Rising, shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

3. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: ((AWP per unit) x (number of units) x 1.25) + \$4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: ((AWP per unit) x (number of units) x 1.09) + \$4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or

- (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2).

Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Propylene	38779051001 Generic	\$0.19	12.0 ml	$\$0.19 \times 12 \times 1.25 = \2.85	\$2.53	\$2.53
Gabapentin 15%	38779246108 Generic	\$59.85	36.0 gm	$\$59.85 \times 36 \times 1.25 = \$2,693.25$	\$2,154.61	\$2,154.61
Fluticasone Propionate 1%	38779276004 Generic	\$3449.3552	2.4 gm	$\$3449.3552 \times 2.4 \times 1.25 = \$10,348.07$	\$8,278.06	\$8,278.06
Pracasil Plus Base Cream	51927465500 Brand Name	\$12.72	170.4 gm	$\$12.72 \times 170.4 \times 1.09 = \$2,362.56$	\$2,167.22	\$2,167.22
Naproxen 5%	62991290401 Generic	\$3.99	12.0 gm	$\$3.99 \times 12 \times 1.25 = \59.85	\$5.04	\$5.04
Total						\$12,607.46

The total reimbursement is, therefore \$12,607.46. This is the recommended amount.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$12,607.46.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$12,607.46, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____ Signature	Laurie Garnes Medical Fee Dispute Resolution Officer	December 30, 2016 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.